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PART VIII



WATER RESOURCES COUNCIL

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WATER PROJECTS REVIEW FUNCTION

Proposed Rule and Procedures of
Implementation

[8410-01-M]

WATER RESOURCES COUNCIL

[18 CFR Part 704]

**WATER PROJECTS REVIEW FUNCTION WITHIN
THE WATER RESOURCES COUNCIL****Proposed Rules and Procedures of
Implementation**AGENCY: U.S. Water Resources
Council.

ACTION: Proposed rule.

SUMMARY: In accordance with Executive Order 12113, a technical review function is being established within the U.S. Water Resources Council (WRC) to evaluate preconstruction plans and reports for Federal water and related land resources projects. This notice sets out the proposed scope of the planning review to be accomplished and the procedures for transmitting agency reports to WRC for review. The proposed rules and procedures apply to water-related Federal and Federally-assisted programs, projects and activities as defined in the Standards Section I.B. 2 of the WRC Principles and Standards for Planning Water and Related Land Resources (P&S) (38 FR 24778, dated September 10, 1973).

The WRC review function will ensure that agencies have complied with the Council's new planning manual for calculating benefits and costs presently being prepared; the P&S, and with other Federal laws, regulations, and guidelines relevant to the planning process. The review will also ensure the goal of wide public participation in the development of project plans and consideration of public views.

DATE: Comments must be received on or before April 15, 1979.

ADDRESS: Comments should be addressed to the Director, Water Resources Council, 2120 L Street, N.W., Washington, D.C. 20037. All written comments made pursuant to this notice will be available for public inspection at the address given above.

**FOR FURTHER INFORMATION
CONTACT:**

Lewis D. Walker, Water Resources Council, 2120 L Street, N.W., Washington, D.C. 20037 (202-254-6453).

It is proposed that Part 704 of 18 CFR be amended by adding a new Subpart F to read as follows:

Subpart F—Water Projects Review

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704.40 Purpose.

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AUTHORITY: E.O. 12113, 44 FR 1955.

Subpart F—Water Projects Review**§ 704.40 Purpose.**

Executive Order 12113, dated January 4, 1979, directed the Water Resources Council (WRC) to ensure that an impartial technical review is performed on preauthorization reports or proposals and preconstruction plans for Federal and Federally-assisted water and related land resources projects and programs, as they are defined in the Council's Principles and Standards. This statement sets forth the proposed rules and procedures implementing a water projects review function within the WRC. The statement provides the scope of the planning review to be conducted by WRC staff; indicates the necessary information to be documented in agency reports to permit timely review presents the procedures for agencies to transmit reports for review and discusses the general content of the water projects review findings. These proposed rules and procedures will serve as interim regulations until final rules are adopted.

§ 704.41 Objectives of WRC water projects review.

(a) In his Water Resources Policy Reform Message of June 6, 1978, the President stated that improvements were needed in the planning and evaluation of Federal water projects in order to achieve greater economic efficiency and environmental quality in water resources management. To implement these reforms, the President directed that the WRC Principles and Standards for Planning Water and Related Land Resources (P&S) (38 FR 24778, dated September 10, 1973) and other applicable rules for protecting natural and cultural resources be adhered to in the planning, review, and implementation of Federal water resources projects. In addition, the President directed the WRC to develop a planning manual for use by each agency in calculating benefits and costs by using the best available techniques and in applying the P&S in a consistent manner. The President also set forth specific criteria that will be used as part of his decision process on water projects. Therefore, the objectives of the WRC review function, as stated in Executive Order 12113, are to evaluate each report, proposal, or plan for compliance with:

(1) The Council's Principles and Standards;

(2) The planning manual or, pending issuance of the manual, established agency procedures;

(3) Other Federal laws, regulations and guidelines relevant to the planning process; and

(4) The goal of wide public participation in the development of project plans, including adequate opportunity for public comment and adequate consideration of those views.

(b) It is also an objective of the WRC review function to provide a technical evaluation of planning aspects related to the President's decision criteria. However, conclusions regarding the authorization or funding of projects, as related to these criteria, will continue to be made by appropriate decisionmakers.

(c) The Office of Management and Budget (OMB) presently reviews certain technical aspects of projects as part of its budget and legislative review function. Executive Order 12113 states that OMB will continue to advise agencies of the relationship of project plans to the program of the President whenever such plans are involved in a legislative process. However, the Executive Order requires that agency submissions to OMB of the reports, proposals, or plans reviewed by the WRC staff shall be accompanied by a statement of the review findings. Therefore, the responsibility for water projects *technical* review will be transferred from OMB to WRC.

§ 704.42 Federal activities covered.

(a) These procedures apply to all active water-related Federal and Federally-assisted programs, projects, and activities as defined in the Standards, Section I.B.2 of the P&S. These procedures are applicable only to agency preauthorization reports which are to be submitted to Congress for project authorization, and to authorized projects (and separable project features) not yet under construction for which agencies currently prepare post-authorization planning documents and for which individual funding requests are submitted to OMB. Subsequent to project authorization, the WRC staff will only review a completed post-authorization planning document once, prior to agency recommendation for initiation of construction, and will not make annual reviews of continuing appropriation requests. The primary focus of the review function will be on the water resources programs of the U.S. Army Corps of Engineers, the Bureau of Reclamation, the Soil Conservation Service and the Tennessee Valley Authority. However, a secondary activity will be the review, in appropriate detail, of other water re-

sources proposals, such as those for wild, scenic, and recreational rivers.

(b) Some agency projects have been planned and authorized prior to implementation of the P&S. For those projects, WRC staff will review the report against contemporary planning standards and provide comparative planning information in its review findings. However, the decision regarding implementation of projects not planned under the P&S will be made by agency heads and other authorities. Failure of a project to meet all contemporary planning standards will not necessarily preclude its implementation.

(c) The WRC water projects review will not require preparation of a new or special report by agencies. The review will be based on those documents that are now prepared by agencies during various stages of their planning process and on the available technical supporting information which is necessary to secure report clearance within the agency submitting the report. This information is normally included either in bound appendices to the report or in supporting documents prepared for internal agency use. After considering the specific planning aspects which the WRC staff will review, as stated in these procedures, an agency may decide to modify its present report format or supporting information to expedite the review process.

§ 704.43 Scope of review.

(a) Certain planning aspects identified in the Executive Order will be reviewed by the WRC staff in order to monitor agency implementation of the P&S and the new planning manual. Other planning elements to be reviewed will provide information related to the President's decision criteria on water projects. By monitoring the same aspects for all reports, the review function will ensure consistent and uniform application of planning practices among agencies.

(b) The scope of the WRC project review has been carefully structured to minimize duplication of agency internal review to the extent practicable and still meet the overall goals and objectives of the President's Water Resources Policy Reform Message and Executive Order 12113. Therefore, agency reports should be well organized and necessary information documented, including the views of all interested parties, to facilitate review and analysis of the agency's planning effort.

(c) The following paragraphs summarize the specific planning aspects that will be reviewed by the WRC staff for preauthorization and post-authorization planning reports and the necessary information that should be

included either in the basic document or in accompanying supporting material.

(1) *Preauthorization reports.* (i) *Alternative plans.* Preauthorization reports will be reviewed to determine whether a reasonable array of alternative plans that address the planning objectives were examined in appropriate detail prior to selecting the proposed plan. The range of measures should not be limited to those traditionally used by the agency. Display of alternatives is particularly important when there are conflicts among study area needs or objectives in determining the effectiveness of different alternatives to accomplish project needs; and to demonstrate the relative merits of a primarily nonstructural alternative. The WRC staff will review the extent of consideration given to alternatives, including a primarily nonstructural solution, which emphasize national economic development and environmental quality.

(A) Since there are uncertainties associated with any projection of future conditions, as related to alternative plans, the consideration of alternative futures has become increasingly important to decisionmakers. The P&S requires that reasonably probable alternative futures be analyzed in project planning. Therefore, the WRC staff will review the reasonableness of the future alternative conditions and the most probable alternative future for "with" and "without" project actions.

(B) Certain agency plans or proposals, such as those to establish wild, scenic, and recreational rivers, may significantly affect the availability and quantity of water which could serve other uses. When such plans would preclude potential future development, the consideration given to tradeoffs between economic and environmental effects, as identified in the appropriate accounts, will be reviewed by the WRC staff.

(ii) *Beneficial effects on national economic development.* The review effort for uniformity and consistency in the measurement of beneficial effects on national economic development will concentrate on direct-user benefits. Special beneficial effects claimed from the use of unemployed and underemployed labor resources resulting from project construction will be reviewed separately.

(A) The WRC staff will examine the estimates of direct-user benefits for each individual project component or purpose, such as municipal and industrial water supply, flood control, irrigation, etc. The methodology and procedures used in the evaluation of each project purpose should be described in the planning document. Agency reports should set forth the major as-

sumptions made concerning future conditions with and without the project, price level assumptions, interest rates, time periods, and other pertinent information.

(B) The review will also examine the estimated beneficial effects from utilization of unemployed and underemployed resources. Designation of the region as an area of persistent unemployment and underemployment should be documented. Reports should describe methodology, procedures, and assumptions used in the study.

(iii) *Project monetary cost estimates.* The estimate of monetary project costs will be reviewed to determine the reasonableness of the overall cost estimate for comparison with project benefits.

(A) *Initial Plan Implementation Costs.* Review of the first cost of project implementation will include the price levels used in the estimate to determine whether the data are current and to compare them with benefit price level assumptions. The review will examine the selected contingency factor to determine if the technical reliability of the cost estimate is reasonable considering unknown factors. Such factors as the cost per kilowatt of installed capacity, cost per mile of transmission line, and cost per acre-foot of storage will be reviewed.

(B) *Interest During Construction.* Interest during construction is important to large water resource projects constructed over a long period of time. Consideration of interest during construction will be based on the length of the construction period for the project or separable parts and on the sensitivity of interest during construction on project justification. The WRC staff will review the assumed construction period and the interest rate used in the calculations to determine the reasonableness of the estimated interest during construction.

(C) *Operation and Maintenance (O&M).* The cost for O&M, like the accrual of project benefits, is spread over the project life and is sensitive to variations that occur over time. The WRC staff will review the plan for operating and maintaining the proposed project and the procedures used to estimate annual O&M costs.

(D) *Replacement Cost.* Even with proper O&M, some major facilities of a project may have shorter useful physical lives than the assumed economic life of the total project. Such facilities must be periodically replaced. Consequently, the assumptions and evaluation of major replacement costs over time will be reviewed.

(E) *Annual Project Cost.* The derivation of the total average annual project costs will be examined to determine if the proper interest rate, amor-

tization, and discounting procedures were used in the project evaluation.

(iv) *Environmental considerations.* Agency reports and accompanying environmental impact statements will be monitored to determine whether agencies have effectively complied with relevant environmental statutes, regulations, executive orders, and policy guidelines. Documents will be reviewed to see if they include an explicit and detailed analysis of environmental effects and important environmental values. Reports should discuss major problems, conflicts, and disagreements among groups and agencies as pertains to environmental considerations and whether such conflicts were resolved. Unresolved conflicts should be summarized, along with the agency's proposal for resolving the disagreements prior to project implementation. An analysis of the effects of the selected plan and alternatives on environmental quality should be provided.

(v) *Public involvement and support.* The WRC staff will review the extent of involvement of Federal, State and local officials and the public in the plan formulation process and the indications of public support. The purpose of such review is only to ensure that there has been adequate opportunity for participation and comment by interested parties and that the agency has considered the expressed desires of the public regarding utilization of the water and related land resources of the study area. Agency reports should document the public involvement program conducted during the planning effort. The various interest groups should be identified and the expressed preferences and desires of those affected by the proposed action should be discussed. Important conflicts in the preferences for utilization of the water and related land resources should be identified. Reports should state the number of persons that attended public meetings and summarize the views expressed on the recommended plan and on other considered alternatives. Agreements, resolutions, commitments, or letters of support or non-support from interested groups should be included in agency reports.

(vi) *Relationship to approved regional water resources management plans.* Selected Federal agency water and related land resources programs and projects shall be consistent with approved regional water resources management plans, or satisfactory reasons for the inconsistency shall be given by the responsible Federal agency (WRC Policy Statement No. 4, 43 FR 28884, dated July 3, 1978). Therefore, information should be included in reports pertaining to any approved regional water resources management plans in the study area, whether the proposed

project is consistent with such plans, or the reasons for the inconsistency.

(vii) *Water conservation measures.* Water conservation measures considered in agency reports will be reviewed for consistency with the conservation options described in the revised P&S. Reports should also discuss the various monetary and nonmonetary impacts and effects associated with the water conservation measures under each account.

(viii) *Identification of new policy directions.* Unusual or unique circumstances may justify an agency recommending an exception to existing Federal policy or a new policy direction. In such circumstances, reports should identify the proposed change to Federal policy and provide the agency's rationale for the suggested change. Agency recommendations for modification of Federal policy will be highlighted in the WRC statement of findings for consideration by appropriate national policy authorities.

(ix) *Distribution of beneficiaries.* The WRC statement of findings will note the distribution of the benefits attributed to proposed agency plans for consideration by decisionmakers. Agency reports should identify by project purposes those groups who directly benefit from the recommended plan. Such identification should include, whenever possible, the region, location and number of people benefited; and the location, number, and type of properties (e.g., residential, commercial, industrial, rural, etc.) affected. The information should also identify benefits to disadvantaged groups.

(x) *Safety.* It is the responsibility of the administering agency to ensure that water projects have no significant safety problems involving design, construction or operation. The WRC staff will not certify whether a proposed project will be safe, but will only monitor the extent of consideration given by the agencies to safety aspects of the project. Preauthorization reports should identify and discuss potential safety problems, including possible losses to human life and property should the project experience a major operational or structural failure or a catastrophic natural event. The measures proposed by the agency to minimize or eliminate the impact of significant hazards should be described.

(xi) *Cost sharing.* The WRC statement of findings will note the extent to which the cost sharing included in the report conforms to existing policy and legislation.

(A) Basic to cost sharing is the presentation of cost allocation studies by objectives and by components or purposes. Agency reports should identify the method and procedural steps used in the cost allocation analysis and explain its conformance with approved

cost allocation procedures. The rationale for the use of other than approved cost allocation procedures should be provided. The results of the cost allocation will be compared with project goals and objectives.

(B) Agency reports should indicate conformance with cost sharing policies and procedures or state if special legislation is required. Available information confirming local interest's willingness to pay, such as a letter of intent, resolutions, and State facilitating legislation (ad valorem taxes, special water resource funds, etc.) should be included in the report.

(xii) *International or intergovernmental problems.* Water resource development preauthorization reports and supporting documentation should specifically identify significant international or intergovernmental problems associated with the proposal. The international or intergovernmental implications of constructing the project will be summarized in the WRC review findings.

(xiii) *Mitigation, compensation, and enhancement.* In formulating water resources projects, agencies should consider measures to protect and enhance fish, wildlife, historical, and other resources. Reports should include a discussion of the need for compensation and/or mitigation and provide relevant information supporting the agency's conclusions. Agency reports should present a schedule for implementing any mitigation plan in relationship to the project construction schedule. Unresolved mitigation issues should be documented.

(2) *Post-authorization Reports.* (i) The foregoing planning aspects will also be reviewed by the WRC staff during the post-authorization stage of a project prior to the time an agency requests funds for initiation of project construction. However, the intensity of the review undertaken will primarily depend on the elapsed time since project authorization, the extent of changed conditions in the study area subsequent to authorization, new policies implemented since authorization, and whether the WRC staff reviewed the report during the preauthorization planning stage. Generally, the review of planning documents in support of funding requests will be minimal when all of the following conditions are met: (A) the time lapse between project authorization and preparation of the post-authorization report is relatively short, (B) the WRC staff reviewed the preauthorization document and found no major concerns, and (C) no major changes in policy or conditions in the study area have occurred since authorization. However, when any of the three conditions are not met, the scope of the WRC water projects review and the supporting information

to be provided by agencies will be the same as that previously set forth for preauthorization reports.

(ii) Post-authorization planning studies should either reaffirm the basic planning decisions made in the preauthorization stage or indicate the modifications made to the plan in response to changed conditions and needs since authorization. Therefore, the following information in addition to that set forth for preauthorization reports should be provided in all post-authorization planning documents transmitted to WRC for review:

(A) Reports should document the analyses made by the agency to either reaffirm the authorized plan or to modify it. If the authorized plan has been modified, the report should address any consideration given to the need for project reauthorization.

(B) Tables should be included in the report which compare the pertinent physical and economic data for the plan, as authorized, with the plan presented in the post-authorization report.

(C) Where planning procedures and data used in the document supporting project authorization differ substantially from current practices, comparison tables should be provided which reflect the use of current procedures.

(D) Reports should provide a current analysis of major environmental effects, along with the updated costs and measures included in the plan to minimize adverse effects or for enhancement. The report should identify changes in measures related to fish and wildlife mitigation, compensation, or enhancement since authorization as well as remaining unresolved issues. Post-authorization reports should include a schedule of funding for such measures and the rationale for providing the funds either before, concurrent with, or after installation of major physical features.

(E) Project cost sharing should be updated and compared with that determined during preauthorization studies.

Agency post/authorization reports should document conformance with and departures from applicable policy and procedures. The status of cost-sharing agreements, contracts, etc., should be discussed.

§ 704.44 WRC review period.

(a) The Chairman of the Council or his/her designee shall transmit the results of the WRC staff technical review to the appropriate agency head within 60 days of the submission of a report, proposal, or plan by the agency. If the documents and information necessary for the review are not initially submitted, the Chairman or his/her designee may extend the review period by not more than 30

days so that information can be obtained from the agency and the review completed. The review period for all reports will begin on the date the planning document is received at WRC and will terminate on the date the Chairman or his/her designee signs the letter transmitting the review findings to the agency head. In no case shall the review period exceed 90 days.

(b) The WRC review unit and the WRC Director will be responsible for determining whether documents and information initially submitted by agencies are adequate for review. Every effort will be made to make this determination within 30 days of submission of the report. If the documents and information are found to be inadequate for review, the agency will be so notified and will be requested to submit additional information. The extent of additional information needed by the WRC staff to complete its review and the anticipated time required by the agency to submit the requested information will determine the extended length of the review period. A maximum of 30 days shall be allowed for an agency to submit the requested additional information to WRC. If such information has not been or cannot be provided within the allowable 30 days, the WRC staff will complete its review findings based on the information already submitted by the agency, or the agency may make arrangements for resubmittal of the report at a later date.

§ 704.45 Procedures for transmitting agency reports for review.

(a) Beginning April 1, 1979, all agencies shall submit to the WRC Director for review, prior to their approval by the head of the agency, preauthorization reports for Federal and federally assisted water and related land resources projects and programs which require congressional authorization for implementation. Preauthorization reports shall be submitted at least 90 days prior to the scheduled time for their transmittal to OMB for advice pertaining to the plan's relationship to the program of the President. Such reports and accompanying environmental statements shall have been reviewed by the Governor of the affected State and appropriate Federal departments prior to transmittal to WRC. The comments of the Governor and those of Federal departments and agencies shall accompany the preauthorization report to WRC.

(b) Beginning April 1, 1979, all agencies shall also transmit to the WRC Director for review, prior to their approval by the head of the agency, currently prepared post-authorization reports in support of funding requests for individual Federal and Federally

assisted water and related land resources projects. Although post-authorization reports can be transmitted to WRC at any time during the year, it is unlikely that a report received after September 1 can be reviewed in time for the project to be included in the President's next budget. The first submission of such planning documents shall be for those activities for which initial construction funds will be requested in fiscal year 1981.

(c) When transmitting reports, agencies shall designate an individual for informal liaison and coordination during the review period. Six copies of the planning document and one copy of technical supporting information, if necessary, shall be transmitted.

§ 704.46 Scheduling of reports for review.

By April 10, 1979, agencies shall submit a schedule to the Director, WRC of all reports and plans expected to be transmitted for review during the remainder of calendar year 1979. Thereafter, by January 10 of each year, agencies shall submit a schedule of all reports expected to be transmitted for review during the succeeding 12 months. Each agency shall refer to WRC not more than one-third of its estimated total reports for a fiscal year during any quarter of that fiscal year without the concurrence of the Director, WRC. In addition, agencies shall inform the Director of any changes in their proposed schedule at the earliest practical date.

§ 704.47 WRC statement of findings.

(a) The Chairman of the Council or his/her designee shall report the results of the technical review to the appropriate agency head in the form of a statement of findings. The findings will: (1) Reference the applicable planning criteria under which the proposed project was formulated, (2) indicate whether the agency has complied with the Principles and Standards and the procedures contained in the WRC planning manual, and (3) provide factual information on the technical adequacy of the agency report for each of the selected planning aspects discussed herein. The statement of findings will identify specific variations from Council approved procedures and other Federal laws, regulations, and guidelines relevant to the planning process, along with the revisions necessary to bring the plan into compliance. It will be the responsibility of the agency head to determine what corrective action, if any, is warranted by the findings of the WRC staff review. Conclusions and recommendations pertaining to project implementation, based on the overall statement of findings, will continue to be the responsibility of the agency head.

PROPOSED RULES

(b) Agency submissions to OMB and to the Congress of the reports, proposals, or plans reviewed pursuant to these rules and procedures shall be accompanied by the statement of findings transmitted to the agency head, together with any agency comments on such findings. The WRC statement of findings will be available to the public upon request.

Dated: February 13, 1979.

LEO M. EISEL,
Director.

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